

competition will benefit a given rural area.³⁰⁷⁸ Bay Springs, *et al.* and Bogue, Kansas argue that rural carriers should benefit from a presumption that they continue to qualify for the exemption in section 251(f)(1).³⁰⁷⁹ SNET suggests that, if a LEC makes a *prima facie* case in its petition for suspension or modification, the state should automatically grant a temporary suspension of section 251(b) and (c) obligations, as allowed by section 251(f)(2).³⁰⁸⁰

1257. USTA, some rural LECs, and several other parties advocate that the Commission clarify what constitutes a bona fide request under section 251(f)(1).³⁰⁸¹ USTA recommends that a bona fide request must include, at a minimum: (1) a request for service to begin within one year from the date of the request, with a minimum one-year service period; (2) identification of the points where interconnection is sought, specification of network components and quantities needed, and the date when interconnection is desired; and (3) an indication that the requesting carrier is willing to agree to pay charges sufficient to compensate the LEC for all costs incurred in fulfilling the terms of the interconnection agreement as part of the agreement. USTA also contends that the states should be allowed to mandate longer minimum service periods and require competitive providers to post bonds or submit deposits to ensure that a rural telephone company does not bear the cost of interconnection.³⁰⁸² Anchorage Telephone Utility claims that simply responding to requests for interconnection imposes a tremendous burden and expense on rural telephone companies, and that rural LECs should not have to respond to requests that do not meet minimum criteria.³⁰⁸³ Several parties state that they do not believe that generalized form letter requests

³⁰⁷⁸ TCA comments at 10.

³⁰⁷⁹ Bay Springs, *et al.* comments at 11; Bogue, Kansas comments at 8; *contra* Classic Tel. reply at 9.

³⁰⁸⁰ SNET comments at 37; *see also* Anchorage Tel. Utility comments at 3-4; Cincinnati Bell comments at 41-42; USTA comments at 91-93.

³⁰⁸¹ Anchorage Tel. Utility comments at 5; Bay Springs, *et al.* at 10; Bogue, Kansas comments at 7; NECA comments at 12; TDS reply at 5-6; USTA comments at 87-88; *see also* Kentucky Commission comments at 7.

³⁰⁸² USTA comments at 87-88; *accord* Anchorage Tel. Utility comments at 6-7 (carriers that ultimately do not order the items identified in a request for interconnection, services, or network elements should be required to reimburse the incumbent LEC for the costs of responding to such request); Matanuska Tel. Ass'n comments at 5.

³⁰⁸³ Anchorage Tel. Utility comments at 6 (reporting the receipt of two letters "purporting to request interconnection." "One is a 1-page letter that simply asserts a need for interconnection. The other is an 8-page, single-spaced letter that demands detailed technical, operational and cost information on practically every facet of Anchorage Tel. Utility's local exchange service, without providing any indication of what the requesting carrier actually plans, needs or wants"); *accord* NECA reply at 10-11 (any bona fide request standard should permit LECs to recover costs of responding to requests and enable LECs to avoid unnecessary costs in

should be considered a bona fide request.³⁰⁸⁴

1258. Other commenters either favor a broader definition of a bona fide request or oppose federal standards entirely.³⁰⁸⁵ NCTA and GCI argue that a request for interconnection should be presumed bona fide until a rural telephone company shows that it is not. They object to a bona fide request requirement, such as the one proposed by USTA, that includes burdensome "pre-filing" requirements as a condition for state review under section 251(f).³⁰⁸⁶

1259. Subsection 251(f)(2) applies to LECs "with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide."³⁰⁸⁷ Several parties suggest that the Commission clarify which carriers meet the numerical standard.³⁰⁸⁸ AT&T and a number of other parties argue that the 2 percent should be applied at the holding company level in order to ensure that no BOC operating company can apply for a suspension or modification under this subsection.³⁰⁸⁹ Some parties further question whether Tier 1 LECs should be allowed to petition for suspension or modification under subsection (f)(2).³⁰⁹⁰ Other parties argue that the two percent statutory cut-off is not a loophole and that the statutory standard should not be altered by the Commission to exclude Tier 1 LECs.³⁰⁹¹ PacTel suggests that the standard should be applied at the operating company level because section 251(f)(2) by its terms applies to "local exchange carrier[s]" not local exchange

responding to requests); TDS reply at 5-6.

³⁰⁸⁴ TDS reply at 5; Anchorage Tel. Utility comments at 6; Rural Tel. Coalition reply at 24-25.

³⁰⁸⁵ See, e.g., Louisiana Commission comments at 22-23 (opposing any attempt by the Commission to define a standard for bona fide requests); see also Western Alliance comments at 7 n.16.

³⁰⁸⁶ NCTA comments at 26-27; GCI reply at 17-18; but see USTA reply at 37 (disagreeing that its proposal would constitute "pre-filing" requirements).

³⁰⁸⁷ 47 U.S.C. § 251(f)(2).

³⁰⁸⁸ BellSouth comments at 76; Ohio Consumers' Counsel comments at 47-48.

³⁰⁸⁹ AT&T comments at 90-93; Lincoln Tel. reply at 9-10; GCI reply at 17; TCC reply at 28; Ohio Consumers' Counsel argues that this interpretation is sound because section 251(f)(2) discusses the number of lines "in the aggregate nationwide," and individual operating companies do not operate on a nationwide scale. Ohio Consumers' Counsel reply at 26.

³⁰⁹⁰ AT&T comments at 92; TLD comments at 6-7; Centennial Cellular Corp. comments at 12-15.

³⁰⁹¹ Alaska Tel. Ass'n comments at 6; Cincinnati Bell comments at 40, reply at 13; Lincoln Tel. comments at 10-11.

carriers "and their affiliates."³⁰⁹²

1260. Some parties recommend that the Commission offer guidance on how to determine whether a request for exemption, modification, or suspension should be granted.³⁰⁹³ For example, sections 251(f)(1) and (f)(2) both include consideration of "technical feasibility" in deciding whether to grant an exemption, suspension, or modification. Some parties urge the Commission to clarify whether the standard for determining technical feasibility for purposes of section 251(f) is different than the technical feasibility standard set forth in sections 251(b) and (c).³⁰⁹⁴ Sections 251(f)(1) and (f)(2) require the states to consider whether a request is "unduly economically burdensome."³⁰⁹⁵ Generally, comments from rural LECs and others contend that smaller LECs cannot afford to hire staff to respond to requests, or expend funds for additional facilities or operational systems without jeopardizing their financial stability.³⁰⁹⁶ In contrast, other parties argue that LECs should not be relieved of any duties otherwise imposed by sections 251(b) and (c) merely because they would require the expenditure of funds.³⁰⁹⁷

1261. Some incumbent LECs recommend that carriers that compete with rural LECs should be required to assume some of the universal service obligations of rural carriers.³⁰⁹⁸ They argue that, without such safeguards, competing LECs will enter rural markets and take the incumbent LECs' profitable customers. USTA argues that state commissions should be encouraged to grant waivers until universal service issues are resolved.³⁰⁹⁹ Commenters also

³⁰⁹² PacTel reply at 40-41.

³⁰⁹³ See, e.g., NCTA comments at 63-67 (urging a very limited construction of the exemption, suspension and modification provisions); *contra* Western Alliance reply at 7; Rural Tel. Coalition reply at 21-22.

³⁰⁹⁴ See, e.g., Bay Springs, *et al.* comments at 11; Lincoln Tel. comments at 23-24; SNET comments at 35; USTA comments at 92; Rural Tel. Coalition reply at 22-23.

³⁰⁹⁵ 47 U.S.C. § 251(f).

³⁰⁹⁶ A number of parties argue that, if smaller and rural LECs cannot recover their total costs, including any required investments and costs associated with developing rate levels and modifying support systems, the request should be deemed unduly economically burdensome. See, e.g., USTA comments at 92; SNET comments at 36; TLD comments at 2; Lincoln Tel. comments at 23-25; TLD comments at 11-13.

³⁰⁹⁷ See, e.g., NCTA comments at 64 n.218.

³⁰⁹⁸ Bay Springs, *et al.* comments at 12; TLD comments at 5; *accord* NECA comments at 11.

³⁰⁹⁹ USTA comments at 91; *but see* NCTA reply at 25-26.

propose varying interpretations of what constitutes "significant adverse impact on users."³¹⁰⁰ USTA proposes that the definition include any request that would cause a LEC to "have difficulty raising sufficient investment capital, and where the remaining customers . . . would likely bear an increase in rates or a reduction in service to cover a shortfall or subsidy to a new entrant."³¹⁰¹ TLD proposes that the Commission establish a numerical benchmark, for example, that more than 50 percent of the users would suffer a rate increase of at least 20 percent before a request would be considered in violation of subsection (f)(2)(A)(i).³¹⁰²

3. Discussion

1262. Congress generally intended the requirements in section 251 to apply to carriers across the country, but Congress recognized that in some cases, it might be unfair or inappropriate to apply all of the requirements to smaller or rural telephone companies.³¹⁰³ We believe that Congress intended exemption, suspension, or modification of the section 251 requirements to be the exception rather than the rule, and to apply only to the extent, and for the period of time, that policy considerations justify such exemption, suspension, or modification. We believe that Congress did not intend to insulate smaller or rural LECs from competition, and thereby prevent subscribers in those communities from obtaining the benefits of competitive local exchange service. Thus, we believe that, in order to justify continued exemption once a bona fide request has been made, or to justify suspension, or modification of the Commission's section 251 requirements, a LEC must offer evidence that application of those requirements would be likely to cause undue economic burdens beyond the economic burdens typically associated with efficient competitive entry. State commissions will need to decide on a case-by-case basis whether such a showing has been made.

1263. Given the pro-competitive focus of the 1996 Act, we find that rural LECs must prove to the state commission that they should continue to be exempt pursuant to section 251(f)(1) from requirements of section 251(c), once a bona-fide request has been made, and that smaller companies must prove to the state commission, pursuant to section 251(f)(2), that a suspension or modification of requirements of sections 251(b) or (c) should be granted. We conclude that it is appropriate to place the burden of proof on the party seeking relief from otherwise applicable requirements. Moreover, the party seeking exemption, suspension, or modification is in control of the relevant information necessary for

³¹⁰⁰ 47 U.S.C. § 251(f)(2)(A)(i).

³¹⁰¹ USTA comments at 92.

³¹⁰² TLD comments at 11.

³¹⁰³ 47 U.S.C. § 251(f).

the state to make a determination regarding the request. A rural company that falls within section 251(f)(1) is not required to make any showing until it receives a bona fide request for interconnection, services, or network elements. We decline at this time to establish guidelines regarding what constitutes a bona fide request. We also decline in this Report and Order to adopt national rules or guidelines regarding other aspects of section 251(f). For example, we will not rule in this proceeding on the universal service duties of requesting carriers that seek to compete with rural LECs. We may offer guidance on these matters at a later date, if we believe it is necessary and appropriate.

1264. We find that Congress intended section 251(f)(2) only to apply to companies that, at the holding company level, have fewer than two percent of subscriber lines nationwide. This is consistent with the fact that the standard is based on the percent of subscriber lines that a carrier has "*in the aggregate nationwide.*"³¹⁰⁴ Moreover, any other interpretation would permit almost any company, including Bell Atlantic, Ameritech, and GTE affiliates, to take advantage of the suspension and modification provisions in section 251(f)(2). Such a conclusion would render the two percent limitation virtually meaningless.

1265. We note that some parties recommend that, in adopting rules pursuant to section 251, the Commission provide different treatment or impose different obligations on smaller or rural carriers.³¹⁰⁵ We conclude that section 251(f) adequately provides for varying treatment for smaller or rural LECs where such variances are justified in particular instances. We conclude that there is no basis in the record for adopting other special rules, or limiting the application of our rules to smaller or rural LECs.

³¹⁰⁴ 47 U.S.C. 251(f)(2) (emphasis added).

³¹⁰⁵ For example, the Rural Tel. Coalition argues that interconnection and collocation points should be set in a flexible manner to take into account size and volume differences among carriers. Rural Tel. Coalition comments at 31.

XIII. ADVANCED TELECOMMUNICATIONS CAPABILITIES

1266. Section 706(a) provides that the Commission "shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment."³¹⁰⁶ In the NPRM, we sought comment on how we can advance Congress's section 706(a) goal within the context of our implementation of sections 251 and 252.³¹⁰⁷

1267. A number of parties suggest that rules allowing them to compete effectively and earn a profit in the telecommunications industry would assist the industry in providing telecommunications services to all Americans.³¹⁰⁸ MFS suggests that "all LECs should be required, as a condition of eligibility for universal service subsidies, to meet network modernization standards for rural telephone companies."³¹⁰⁹ Several state commissions indicate that they have already established programs to assist institutions eligible under section 706 in deploying advanced telecommunications services.³¹¹⁰ The Alliance for Public Technology asserts that section 706 should underlie all of the FCC's proceedings.³¹¹¹ Ericsson states that the industry should work with government agencies to promote leading edge technology to ensure that it is introduced on a reasonably timely basis. For example, it contends that "Plug and Play Internet use" will greatly help the public and schools access information, and that advanced technology such as asynchronous transfer mode (ATM), wireless data/video, and AIN will enhance interconnection capabilities of public and private networks.³¹¹² The Illinois Commission contends that, depending on the pricing standard the Commission adopts for interconnection and access to unbundled elements, and the Commission's interpretation of the prohibition against discrimination, the Commission should adopt special rules for carriers when they provide interconnection or access to unbundled

³¹⁰⁶ 47 U.S.C. § 706(a).

³¹⁰⁷ NPRM at para. 263.

³¹⁰⁸ Colorado Ind. Tel. Ass'n comments at 6; COMAV comments at 60-61; GVNW comments at 42; Illinois Ind. Tel. Ass'n comments at 7; Louisiana Commission comments at 24-27.

³¹⁰⁹ MFS comments at 88.

³¹¹⁰ Illinois Commission comments at 85; Louisiana Commission comments at 24-27; Texas Commission comments at 36.

³¹¹¹ Alliance for Public Technology reply at 1-5.

³¹¹² Ericsson comments at 7-8.

network elements to serve a school, library, or healthcare provider.³¹¹³

1268. We decline to adopt rules regarding section 706 in this proceeding. We intend to address issues related to section 706 in a separate proceeding.

³¹¹³ Illinois Commission comments at 86.

XIV. PROVISIONS OF SECTION 252**A. Section 252(e)(5)****1. Background**

1269. Section 252(e)(5) directs the Commission to assume responsibility for any proceeding or matter in which the state commission "fails to act to carry out its responsibility" under section 252.³¹¹⁴ In the NPRM, we asked whether the Commission should establish rules and regulations necessary to carry out our obligation under section 252(e)(5).³¹¹⁵ In addition, we sought comment on whether in this proceeding we should establish regulations necessary and appropriate to carry out our obligations under section 252(e)(5). In particular, we sought comment on what constitutes notice of failure to act, what procedures, if any, we should establish for parties to notify the Commission, and what are the circumstances under which a state commission should be deemed to have "fail[ed] to act" under section 252(e)(5).³¹¹⁶

1270. Section 252(e)(4) provides that, if the state commission does not approve or reject (1) a negotiated agreement within 90 days, or (2) an arbitrated agreement within 30 days, from the time the agreement is submitted by the parties, the agreement shall be "deemed approved."³¹¹⁷ We sought comment on the relationship between this provision and our obligation to assume responsibility under section 252(e)(5). We also sought comment on whether the Commission, once it assumes the responsibility of the state commission, is bound by all of the laws and standards that would have applied to the state commission, and whether the Commission is authorized to determine whether an agreement is consistent with applicable state law as the state commission would have been under section 252(e)(3).³¹¹⁸ In addition, we sought comment on whether, once the Commission assumes responsibility under section 252(e)(5), it retains jurisdiction, or whether that matter or proceeding subsequently should be remanded to the state.

1271. Finally, we sought comment on whether we should adopt, in this proceeding, some standards or methods for arbitrating disputes in the event we must conduct an

³¹¹⁴ 47 U.S.C. § 252(e)(5).

³¹¹⁵ NPRM at ¶ 265.

³¹¹⁶ NPRM at ¶ 266.

³¹¹⁷ 47 U.S.C. § 252(e)(4).

³¹¹⁸ NPRM at ¶ 267.

arbitration under section 252(e)(5). We noted some of the benefits and drawbacks of both "final offer" arbitration and open-ended arbitration, and asked for comment on both.

2. Comments

1272. The majority of the parties that commented on this issue assert that the Commission should establish guidelines under which it will carry out its responsibilities under section 252(e)(5).³¹¹⁹ The Illinois Commission, for example, argues that regulations are needed in order to avoid jurisdictional disputes that may arise.³¹²⁰ Some parties, on the other hand, argue that it is not critical for the Commission at this time to develop rules governing the arbitration process.³¹²¹ The Pennsylvania Commission, for example, argues that such rules should be adopted in this proceeding only if the Commission perceives a real possibility that it will be asked in the near future to arbitrate an interconnection agreement.³¹²²

1273. A broad range of parties comment on what constitutes a "failure to act" and whether the Commission should establish a definition and procedures for interested parties to notify us if a state commission fails to act.³¹²³ The Illinois Commission, for example, argues that, upon receipt of a petition to mediate or arbitrate, or a BOC statement of generally available terms, the state commission should issue and serve upon the Commission a notice of its intent to act. This will put the Commission and interested parties on notice that the state commission intends to act.³¹²⁴ Some state commissions argue that "failure to act" occurs only if the state commission fails to respond to a request for mediation or arbitration, or fails to issue an arbitration decision within nine months after the incumbent

³¹¹⁹ See, e.g., Jones Intercable comments at 16-18; California Commission comments at 49; Illinois Commission comments at 87; MCI comments at 94-95; BellSouth comments at 78; Cable & Wireless comments at 50-51; Time Warner comments at 104-105; Oregon Commission comments at 4.

³¹²⁰ Illinois Commission comments at 87.

³¹²¹ See, e.g., Pennsylvania Commission comments at 42; PacTel comments at 99; Iowa Commission comments at 7; GTE comments at 80-81.

³¹²² Pennsylvania Commission comments at 42.

³¹²³ See, e.g., Illinois Commission comments at 89; District of Columbia comments at 40; Ohio Commission comments at 81-82; Time Warner comments at 106-107; PacTel comments at 99; Jones Intercable comments at 16 (failure to act occurs where a state fails to respond to a request for arbitration or fails to render a decision on time in arbitration).

³¹²⁴ Illinois Commission comments at 89.

LEC receives a request for interconnection under section 252.³¹²⁵

1274. Other parties contend that failure to act should mean that a state commission has not taken any steps to act upon a request for arbitration, or has not taken any steps to approve an arbitrated agreement within the time set out in section 252(e)(4).³¹²⁶ Jones argues that a failure to act occurs where a state fails to respond to a request for arbitration or fails to render a decision on time in the arbitration proceeding.³¹²⁷ Ohio Consumers' Counsel contends that failure to carry out a state's responsibility means more than mere inaction, and that, for example, willfully disregarding the standards in section 252(e)(2) for approving or disapproving agreements might also "constitute a failure to act to carry out its responsibility" under section 252.³¹²⁸ USTA argues that, where there has been no agreement and the state fails to act, the Commission must step in and, in some instances, the Commission may need to step in to arbitrate or mediate before an agreement has been reached.³¹²⁹

1275. Regarding the relationship between sections 252(e)(5) and 252(e)(4), most commenters assert that, if a state fails to approve a negotiated agreement within 90 days, or an arbitrated agreement within 30 days, the agreement will be deemed approved, and no Commission action is required.³¹³⁰ These parties contend that approval or disapproval of negotiated or arbitrated agreements are not reviewable by the Commission, but that aggrieved parties may seek relief in the appropriate federal district court.

1276. A number of commenters believe that it is important that procedures be in place for interested parties to notify the Commission if a state fails to act. These parties argue that notice of failure to act should be in writing, and should contain the relevant factual circumstances including the provision of the statute under which the state allegedly has failed

³¹²⁵ District of Columbia Commission comments at 40; Ohio Commission comments at 81-82; *accord* Cable & Wireless comments at 51.

³¹²⁶ See, e.g., Oregon Commission comments at 4; California Commission comments at 47; Ohio Consumers' Counsel comments at 49; Texas Commission comments at 36-37.

³¹²⁷ Jones Intercable comments at 16.

³¹²⁸ Ohio Consumers' Counsel comments at 49; *see also* California Commission comments at 48 (an agreement automatically approved because the state did not act within the specified time frame should not be deemed to be in compliance with state law).

³¹²⁹ USTA comments at 93-94.

³¹³⁰ See, e.g., USTA comments at 93-94; Illinois Commission comments at 88; BellSouth comments at 79; Jones Intercable comments at 15; Time Warner reply at 106-107; PacTel comments at 99.

to act.³¹³¹ They contend that notice should be given to allow interested parties and the state adequate time to respond. MCI asserts that existing Commission procedures are adequate. MCI argues that any notice of an alleged state commission failure to act should set forth relevant facts and the Commission should place the item on public notice.³¹³²

1277. A majority of the commenting parties argue that, if the Commission assumes the responsibility of a state commission, it should be bound by laws and standards that would have applied to the state commission.³¹³³ These parties allege that this approach would produce consistent results, and that Congress did not intend to create another forum with a separate set of rules. Time Warner, on the other hand, argues against the Commission being bound by state law.³¹³⁴

1278. Parties disagree over whether authority would revert back to the states once the Commission assumes a state commission's responsibility. A number of state commissions argue that the Commission does not retain jurisdiction; it only assumes jurisdiction over a particular proceeding or matter but does not substitute for the state commission on an ongoing basis.³¹³⁵ The District of Columbia Commission asserts that, at any time, the state should be able to petition the Commission to reconsider its decision to preempt, and such petitions should be granted upon a reasonable assurance the state intends to carry out its obligations.³¹³⁶ A number of parties contend that, once the Commission assumes jurisdiction over a proceeding or matter, it should retain jurisdiction.³¹³⁷ Teleport,

³¹³¹ See, e.g., Ohio Commission comments at 81; Ohio Consumers' Counsel comments at 49; Illinois Commission comments at 89-90.

³¹³² MCI comments at 95.

³¹³³ See, e.g., PacTel comments at 13-14 (if there is any conflict between the Commission's own rules and requirements of that state, the Commission must lay aside its rules and enforce the state's); California Commission comments at 48; Illinois Commission comments at 90; BellSouth comments at 79; Ohio Commission comments at 82; Louisiana Commission comments at 28 (specific questions concerning a state's law could be certified to the state); SBC comments at 105.

³¹³⁴ Time Warner comments at 107-108 (the Commission's authority to interpret state law is suspect, and the Commission lacks the resources and expertise to sit as a trier of law in fifty jurisdictions).

³¹³⁵ See, e.g., Ohio Commission comments at 81; Louisiana Commission comments at 28; Pennsylvania Commission comments at 43; District of Columbia Commission comments at 40-41; BellSouth comments at 80.

³¹³⁶ District of Columbia Commission comments at 40-41.

³¹³⁷ See, e.g., Teleport comments at 89; Jones Intercable comments at 17; Time Warner comments at 109; Oregon Commission comments at 5 (failure by the state to act on one agreement should not vest jurisdiction over other agreements or matters).

for example, argues that the Commission "should not risk returning jurisdiction to a state that has demonstrated an ineptitude for implementing interconnection agreements."³¹³⁸ Pacific Telesis and Cable and Wireless argue that any agreement arbitrated by the Commission must be submitted to the state for approval.³¹³⁹

1279. The vast majority of commenters recommend that the Commission adopt standards for arbitrating disputes in the event that it assumes responsibility under section 252(e)(5).³¹⁴⁰ These parties assert that sufficiently detailed rules should ensure fair and expeditious handling of arbitrations. A few of the commenters favor national rules governing state arbitration proceedings.³¹⁴¹ SCBA, for example, favors national standards requiring state commissions to use abbreviated, lower cost arbitration proceedings for small cable operators.³¹⁴² The majority of commenters, however, argue against national rules that would govern state arbitration proceedings.³¹⁴³

1280. There is also significant disagreement regarding whether final-offer arbitration should be the arbitration model adopted by the Commission in the event the Commission must conduct the arbitration itself. A broad range of parties argue that final offer arbitration would result in reasonable recommendations to the arbitrator.³¹⁴⁴ Vanguard argues that the "final offer" method of arbitration should permit post-offer negotiation by the parties and allow the parties to tailor counter-proposals.³¹⁴⁵ Under this approach, the Commission would permit negotiation to continue after arbitration offers are exchanged in order to promote

³¹³⁸ Teleport comments at 89.

³¹³⁹ PacTel comments at 100; Cable & Wireless comments at 52.

³¹⁴⁰ See, e.g., Teleport comments at 85-86; MFS comments at 89-90; CompTel comments at 108; MCI comments at 95-96; Ohio Consumers' Counsel comments at 50; SBC comments at 99; Kentucky Commission comments at 7; Ohio Commission comments at 83; Illinois Commission comments at 91; Time Warner comments at 109; Jones Intercable comments at 18; Vanguard comments at 35-37; Association of Telecommunications Services International reply at 18.

³¹⁴¹ See, e.g., Vanguard comments at 35-37; Time Warner comments at 109.

³¹⁴² SCBA comments at 11-12.

³¹⁴³ See, e.g., Oregon Commission reply at 11; Ohio Commission comment at 81; NARUC reply at 14; Illinois Commission at 91.

³¹⁴⁴ See, e.g., Teleport comments at 88; USTA comments at 94-95; SBC comments at 103;

³¹⁴⁵ Vanguard comments at 39-40.

negotiated settlements.³¹⁴⁶

1281. Many competitors oppose a "final offer" arbitration standard.³¹⁴⁷ Sprint, for example, argues that "final-offer" arbitration works well when there is a single, narrowly defined issue on the table, but, where there are numerous complex technical and economic issues, confronting the arbitrator with an "either/or" choice leaves insufficient flexibility to achieve a result that comports with section 251.³¹⁴⁸ In addition, Sprint asserts that, because arbitration proceedings have a public interest component that sets them apart from mere private disputes, neither party's offer might serve the public interest.³¹⁴⁹ Some parties recommend an "open-ended" arbitration system,³¹⁵⁰ while California is in favor of a hybrid between the two.³¹⁵¹

1282. SBC contends that Congress did not intend for arbitration to be binding to the extent that parties are not legally obligated to enter into an agreement after the arbitrator issues a decision.³¹⁵² SBC argues that parties are bound by the arbitrator's decision only if they decide to enter into an agreement. Vanguard responds that SBC's proposal is contrary to the statute, which does not give parties the opportunity to reject the results of arbitration and which does not provide for *de novo* review.³¹⁵³

3. Discussion

³¹⁴⁶ *Id.* at 40.

³¹⁴⁷ See, e.g., MCI comments at 95-96; Sprint reply at 47; Time Warner comments at 111; Competitive Policy Institute reply at 21-22; GCI reply at 5.

³¹⁴⁸ Sprint reply at 47.

³¹⁴⁹ *Id.*

³¹⁵⁰ See, e.g., Time Warner comments at 111.

³¹⁵¹ California Commission comments at 50. The California Commission's procedures for resolving interconnection disputes is based on a four-step expedited dispute resolution process for resolving disputes between parties who cannot agree on the terms of interconnection. Step 1 is informal resolution without state intervention. Step 2 provides for dispute resolution with mediation by the Administrative Law Judge (ALJ). Step 3 calls for the parties to submit short pleadings to the ALJ who shall use the state commission's "preferred outcomes" approach as a guideline in resolving dispute. Step 4 allows for a party to challenge an ALJ ruling by filing an expedited complaint.

³¹⁵² SBC comments at 99.

³¹⁵³ Vanguard reply at 18-20; accord Competition Policy Institute reply at 18-19.

1283. After careful review of the record, we are convinced that establishing regulations to carry out our obligations under section 252(e)(5) will provide for an efficient and fair transition from state jurisdiction should we have to assume the responsibility of the state commission under Section 252(e)(5). The rules we establish in this section with respect to arbitration under section 252 apply only to instances where the Commission assumes jurisdiction under section 252(e)(5); we do not purport to advise states on how to conduct arbitration when the Commission has not assumed jurisdiction. The rules we establish will give notice of the procedures and standards the Commission would apply to mediation and arbitration, avoid delay if the Commission had to arbitrate disputes in the near future, and may also offer guidance the states may, at their discretion, wish to consider in implementing their own mediation and arbitration procedures and standards. We decline to adopt national rules governing state arbitration procedures. We believe the states are in a better position to develop mediation and arbitration rules that support the objectives of the 1996 Act. States may develop specific measures that address the concerns of small entities and small incumbent LECs participating in mediation or arbitration.

1284. The rules we adopt herein are minimum, interim procedures. Adopting minimum interim procedures now will allow the Commission to learn from the initial experiences and gain a better understanding of what types of situations may arise that require Commission action. We note that the Commission is not required to adopt procedures and standards for mediation and arbitration within the six-month statutory deadline and that, by adopting minimum interim procedures, the Commission can better direct its resources to more pressing matters that fall within the six-month statutory deadline.

1285. Regarding what constitutes a state's "failure to act to carry out its responsibility under" section 252,³¹⁵⁴ the Commission was presented with numerous options. The Commission will not take an expansive view of what constitutes a state's "failure to act." Instead, the Commission interprets "failure to act" to mean a state's failure to complete its duties in a timely manner. This would limit Commission action to instances where a state commission fails to respond, within a reasonable time, to a request for mediation or arbitration, or fails to complete arbitration within the time limits of section 252(b)(4)(C).³¹⁵⁵ The Commission will place the burden of proof on parties alleging that the state commission has failed to respond to a request for mediation or arbitration within a reasonable time frame. We note the work done by states to date in putting in place procedures and regulations governing arbitration and believe that states will meet their responsibilities and obligations

³¹⁵⁴ 47 U.S.C. § 252(e)(5).

³¹⁵⁵ 47 U.S.C. § 252(b)(4)(C).

under the 1996 Act.³¹⁵⁶

1286. We agree with the majority of commenters that argue that our authority to assume the state commission's responsibilities is not triggered when an agreement is "deemed approved" under section 252(e)(4) due to state commission inaction. Section 252(e)(4) provides for automatic approval if a state fails to approve or reject a negotiated or arbitrated agreement within 90 days or 30 days, respectively. Rules of statutory construction require us to give meaning to all provisions and to read provisions consistently, where it is possible to do so. We thus conclude that the most reasonable interpretation is that automatic approval under section 252(e)(4) does not constitute a failure to act.

1287. We also believe that we should establish interim procedures for interested parties to notify the Commission that a state commission has failed to act under section 252. We believe that parties should be required to file a detailed written petition, backed by affidavit, that will, at the outset, give the Commission a better understanding of the issues involved and the action, or lack of action, taken by the state commission. Allowing less detailed notification increases the likelihood that frivolous requests will be made. With less detailed notification, the Commission's investigations would be broader and more burdensome. A detailed written petition will facilitate a decision about whether the Commission should assume jurisdiction based on section 252(e)(5).

1288. The moving party should submit a petition to the Secretary of the Commission stating with specificity the basis for the petition and any information that supports the claim that the state has failed to act, including, but not limited to the applicable provision(s) of the Act and the factual circumstances which support a finding that a state has failed to act. The moving party must ensure that the applicable state commission and the parties to the proceeding or matter for which preemption is sought are served with the petition on the same date the party serves the petition on the Commission. The petition will serve as notice to parties to the state proceeding and the state commission who will have fifteen days from the date the petition is filed with the Commission to comment. Under section 252(e)(5), the Commission must "issue an order preempting the state commission's jurisdiction of that proceeding or matter" no later than 90 days from the date the petition is filed.³¹⁵⁷ If the Commission takes notice, as section 252(e)(5) permits, that a state commission has failed to act, it will, on its own motion, issue a public notice and provide fifteen days for interested

³¹⁵⁶ See, e.g., *In the Matter of the Implementation of the Mediation and Arbitration Provisions of the Federal Telecommunications Act of 1996*, Case No. 96-463-TP-UNC, Ohio Commission, (May 30, 1996); *Illinois Commerce Commission On Its Own Motion Adoption of 83 Ill. Adm. Code 761 to Implement the Arbitration Provisions of Section 252 of the Telecommunications Act of 1996*, Docket No. 96-0297, Illinois Commission (June 14, 1996).

³¹⁵⁷ 47 U.S.C. § 252(e)(5).

parties to submit comment on whether the Commission should assume responsibility under section 252(e)(5).

1289. If the Commission assumes authority under section 252(e)(5), the Commission must also decide whether it retains authority for that proceeding or matter. We agree with those parties who argue that, once the Commission assumes jurisdiction of a proceeding or matter, it retains authority for that proceeding or matter. For example, if the Commission obtains jurisdiction after a state commission fails to respond to a request for arbitration, the Commission maintains jurisdiction over the arbitration proceeding. Therefore, once the proceeding is before the Commission, any and all further action regarding that proceeding or matter will be before the Commission. We note that there is no provision in the Act for returning jurisdiction to the state commission; moreover, the Commission, with significant knowledge of the issues at hand, would be in the best position efficiently to conclude the matter. Thus, as both a legal and policy matter, we believe that the Commission retains jurisdiction over any matter and proceeding for which it assumes responsibility under Section 252(e)(5).

1290. We reject the suggestion by some parties that, once the Commission has mediated or arbitrated an agreement, the agreement must be submitted to the state commission for approval under state law. We note that section 252(e)(5) provides for the Commission to "assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State commission."³¹⁵⁸ This includes acting for the state commission under section 252(e)(1), which calls for state commission approval of "any interconnection agreement adopted by negotiation or arbitration."³¹⁵⁹ We, therefore, do not read section 252(e)(1) or any other provision as calling for state commission approval or rejection of agreements mediated or arbitrated by the Commission. In those instances where a state has failed to act, the Commission acts on behalf of the state and no additional state approval is required.

1291. Requirements set forth in section 252(c) for arbitrated agreements would apply to arbitration conducted by the Commission. We see no reason, and no party has suggested a policy or legal basis, for not applying such standards when the Commission conducts arbitration. Thus, arbitrated agreements must: (1) meet the requirements of section 251, including regulations prescribed by the Commission pursuant to section 251; (2) establish any rates for interconnection, services, or network elements according to section 252(d); and (3) provide a schedule for implementation of the terms and conditions by the parties to the

³¹⁵⁸ 47 U.S.C. § 252(e)(5).

³¹⁵⁹ 47 U.S.C. § 252(e)(1).

agreement.³¹⁶⁰ We reject the suggestion made by some parties that, if the Commission steps into the state commission role, it is bound by state laws and standards that would have applied to the state commission. While states are permitted to establish and enforce other requirements, these are not binding standards for arbitrated agreements under section 252(c). Moreover, the resources and time potentially needed to review adequately and interpret the different laws and standards of each state render this suggestion untenable. Finally, we conclude that it would not make sense to apply to the Commission the timing requirements that section 252(b)(4)(c) imposes on state commissions. The Commission, in some instances, might not even assume jurisdiction until nine months (or more) have lapsed since a section 251 request was initiated.

1292. Based on the comments of the parties, we conclude that a "final offer" method of arbitration, similar to the approach recommended by Vanguard, would best serve the public interest.³¹⁶¹ Under "final offer" arbitration, each party to the negotiation proposes its best and final offer and the arbitrator determines which of the proposals become binding. The arbitrator would have the option of choosing one of the two proposals in its entirety, or the arbitrator could decide on an issue-by-issue basis. Each final offer must: (1) meet the requirements of section 251, including the Commission's rules thereunder; (2) establish rates for interconnection, services, or network elements according to section 252(d); and (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.³¹⁶² If a final offer submitted by one or more parties fails to comply with these requirements, the arbitrator would have discretion to take steps designed to result in an arbitrated agreement that satisfies the requirements of section 252(c), including requiring parties to submit new final offers within a time frame specified by the arbitrator, or adopting a result not submitted by any party that is consistent with the requirements in section 252(c).

1293. The parties could continue to negotiate an agreement after they submit their proposals and before the arbitrator makes a decision. Under this approach, the Commission will encourage negotiations, with or without the assistance of the arbitrator, to continue after arbitration offers are exchanged. Parties are not precluded from submitting subsequent final offers following such negotiations. We believe that permitting post-offer negotiations will increase the likelihood that the parties will reach consensus on unresolved issues. In addition, permitting post-offer negotiations will increase flexibility and will allow parties to tailor counter-proposals after arbitration offers are exchanged. To provide an opportunity for final post-offer negotiation, the arbitrator will not issue a decision for at least 15 days after submission of the final offers by the parties. In addition, the offers must be consistent with

³¹⁶⁰ 47 U.S.C. § 252(c).

³¹⁶¹ Vanguard comments at 39-40.

³¹⁶² 47 U.S.C. § 252(c).

section 251, including the regulations prescribed by the Commission. We reject SBC's suggestion that an arbitrated agreement is not binding on the parties. Absent mutual agreement to different terms, the decision reached through arbitration is binding. We conclude that it would be inconsistent with the 1996 Act to require incumbent LECs to provide interconnection, services, and unbundled elements, impose a duty to negotiate in good faith and a right to arbitration, and then permit incumbent LECs to not be bound by an arbitrated determination. We also believe that, although competing providers do not have an affirmative duty to enter into agreements under section 252, a requesting carrier might face penalties if, by refusing to enter into an arbitrated agreement, that carrier is deemed to have failed to negotiate in good faith.³¹⁶³ Such penalties should serve as a disincentive for requesting carriers to force an incumbent LEC to expand resources in arbitration if the requesting carrier does not intend to abide by the arbitrated decision.

1294. Adopting a "final offer" method of arbitration and encouraging negotiations to continue allows us to maintain the benefits of final offer arbitration, giving parties an incentive to submit realistic "final offers," while providing additional flexibility for the parties to agree to a resolution that best serves their interests. To the extent that these procedures encourage parties to negotiate voluntarily rather than arbitrate, such negotiated agreements will be subject to review pursuant to section 252(e)(2)(A), which would allow the Commission to reject agreements if they are inconsistent with the public interest. This approach also addresses the argument that under "final offer" arbitration neither offer might best serve the public interest, because it allows the parties to obtain feedback from the arbitrator on public interest matters.

1295. We believe that the arbitration proceedings generally should be limited to the requesting carrier and the incumbent local exchange provider. This will allow for a more efficient process and minimize the amount of time needed to resolve disputed issues. We believe that opening the process to all third parties would be unwieldy and would delay the process. We will, however, consider requests by third parties to submit written pleadings. This may, in some instances, allow interested parties to identify important public policy issues not raised by parties to an arbitration.

³¹⁶³ See 47 U.S.C. § 252(b)(5) (requiring parties to negotiate in good faith in the course of arbitration).

B. Requirements of Section 252(i)**1. Background**

1296. Section 251 requires that interconnection, unbundled element, and collocation rates be "nondiscriminatory" and prohibits the imposition of "discriminatory conditions" on the resale of telecommunications services.³¹⁶⁴ Section 252(i) of the 1996 Act provides that a "local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under [section 252] to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."³¹⁶⁵ In the NPRM, we expressed the view that section 252(i) appears to be a primary tool of the 1996 Act for preventing discrimination under section 251, and we sought comment on whether we should adopt national standards for resolving disputes under section 252(i) in the event that we must assume the state's responsibilities pursuant to section 252(e)(5). In addition, because we may need to interpret section 252(i) if we assume the state commission's responsibilities, we sought comment on the meaning of section 252(i):

1297. We also sought comment in the NPRM on whether section 252(i) requires that only similarly-situated carriers may enforce against incumbent LECs provisions of agreements filed with state commissions, and, if so, how "similarly-situated carrier" should be defined. In particular, we asked whether section 252(i) requires that the same rates for interconnection must be offered to all requesting carriers regardless of the cost of serving that carrier, or whether it would be consistent with the statute to permit different rates if the costs of serving carriers are different. We also asked whether the section can be interpreted to allow incumbent LECs to make available interconnection, services, or network elements only to requesting carriers serving a comparable class of subscribers or providing the same service (*i.e.*, local, access, or interexchange) as the original parties to the agreement. In the NPRM, we tentatively concluded that the language of the statute appears to preclude such differential treatment among carriers.

1298. Additionally, we sought comment in the NPRM on whether section 252(i) permits requesting telecommunications carriers to choose among individual provisions of publicly-filed interconnection agreements or whether they must subscribe to an entire agreement. We also sought comment regarding what time period an agreement must remain available for use by other requesting telecommunications carriers.

³¹⁶⁴ 47 U.S.C. §§ 251(c)(2)(D) (interconnection rates, terms, and conditions); 251(c)(3) (unbundled network elements rates, terms, and conditions); 251(c)(6) (collocation rates, terms, and conditions); and 251(c)(4)(B) (resale). Section 252(d)(1) also requires nondiscriminatory interconnection and network element charges. 47 U.S.C. § 252(d)(1).

³¹⁶⁵ 47 U.S.C. § 252(i).

2. Comments

1299. Two state commissions and SBC believe that implementation of section 252(i) should be left to the states,³¹⁶⁶ while Time Warner favors national standards.³¹⁶⁷ CompTel argues that we should adopt expedited procedures whereby carriers may complain to the Commission when incumbent LECs refuse to make agreements available to them in alleged violation of section 252(i).³¹⁶⁸

1300. New entrants generally support the view that section 252(i) does not require that requesting carriers seeking to avail themselves of a prior negotiated or arbitrated agreement be "similarly situated" with respect to the original party who negotiated the agreement.³¹⁶⁹ They argue that such a limitation would be contrary to Congress's intent,³¹⁷⁰ or that it could invite perpetual dispute over which carriers are similarly situated and what cost differences are real and material.³¹⁷¹ Winstar questions whether states could implement a "similarly situated" carrier requirement without unintentionally creating a vehicle for incumbent LECs to discriminate against competitive entrants.³¹⁷² LDDS specifically agrees with the NPRM's tentative conclusion that section 252(i) prohibits incumbent LECs from limiting the availability of agreements to a carrier based on the class of customers the carrier serves or the type of service it provides.³¹⁷³ The Telecommunications Resellers Ass'n believes section 252(i) prohibits discrimination on the basis of the cost of serving a carrier, and claims its members have been, and continue to be, denied preferred service offerings and

³¹⁶⁶ Pennsylvania Commission comments at 43; Louisiana Commission comments at 28-29; SBC Comments at 24.

³¹⁶⁷ Time Warner comments at 112.

³¹⁶⁸ CompTel comments at 107.

³¹⁶⁹ WinStar comments at 18-19; CompTel comments at 106; LDDS comments at 88; Time Warner comments at 113; ACSI reply at 23-24; Telecommunications Resellers Ass'n comments at 50.

³¹⁷⁰ CompTel comments at 106; LDDS comments at 88; Time Warner comments at 113. CompTel also asserts that, subject to cost-based deviations, no carrier should pay more than any other carrier when it purchases the same service or facility from the same incumbent LEC, nor should agreements include language regarding the nature of the carrier who may subsequently enter into the same agreements. CompTel comments at 106.

³¹⁷¹ Telecommunications Resellers Ass'n comments at 50-51.

³¹⁷² WinStar comments at 18-19.

³¹⁷³ LDDS comments at 88.

price points in the interexchange market under the guise of a "similarly situated" criterion.³¹⁷⁴

1301. WinStar suggests we assign to the incumbent LEC a heavy burden of proving that a new carrier is substantially different from the original parties to an agreement, and that we require the incumbent LEC to provide service to the new entrant according to the individual terms of an agreement while the dispute is pending. WinStar asserts that, absent such requirements, the incumbent LEC could use alleged technological differences to create barriers to entry.³¹⁷⁵

1302. GTE, PacTel, USTA, BellSouth, and the Ohio Consumers' Counsel believe the statute contemplates drawing distinctions between carriers,³¹⁷⁶ such as, for instance, where the incumbent LEC faces different costs in serving different carriers.³¹⁷⁷ According to GTE and PacTel, carriers must be "similarly situated" because the subsequent carrier's technical requirements may be incompatible with the incumbent LEC's network.³¹⁷⁸ GTE asserts that providing service under an agreement to carriers that are not similarly situated with respect to the technical feasibility and costs of interconnection and transport and termination would be inconsistent with the 1996 Act's requirements that interconnection be technically feasible and offered at cost-based rates.³¹⁷⁹

1303. Incumbent LECs also generally oppose the view that section 252(i) permits competitive carriers to choose among provisions in a publicly-filed interconnection agreement.³¹⁸⁰ For instance, BellSouth contends that the text of section 252(i) supports its view, and that the legislative history reference cited in the NPRM casts no light on Congress'

³¹⁷⁴ Telecommunications Resellers Ass'n comments at 50-51.

³¹⁷⁵ WinStar comments at 19 n.14. WinStar further suggests that the LEC should be required to adjust the arrangement to account for differences in technology employed by the new entrant, without revising material terms of the arrangement. *Id.*

³¹⁷⁶ GTE comments at 82-83; PacTel comments at 101; USTA comments at 95-96; BellSouth comments at 80-81; Ohio Consumers' Counsel comments at 51.

³¹⁷⁷ GTE comments at 82-83; Municipal Utilities comments at 14; USTA comments at 96.

³¹⁷⁸ GTE comments at 82-83; PacTel comments at 101.

³¹⁷⁹ GTE comments at 83.

³¹⁸⁰ See, e.g., Ameritech comments at 98-99; BellSouth comments at 81; Bay Springs *et al* comments at 19; GTE comments at 83; SBC comments at 24; USTA comments at 96-97.

intent because the House did not recede to the Senate's language.³¹⁸¹ GTE urges the Commission to treat the availability of agreements under section 252(i) the same way it treats AT&T Tariff 12 and Contract Tariff offerings.³¹⁸² Ameritech, GTE and SBC also contend that section 252(i)'s requirement that a requesting carrier take service upon the same terms and conditions as the original carrier precludes unbundled availability.³¹⁸³ USTA argues unbundled availability of agreement provisions will skew the individualized nature of negotiations, magnify the importance of each individual term of an agreement, and encourage incumbent LECs to offer only standardized, relatively high-cost packages.³¹⁸⁴

1304. New entrants, joined by the Ohio Commission, support the view that the statute makes individual provisions of agreements available to carriers.³¹⁸⁵ They argue that this comports with the statutory language and legislative history,³¹⁸⁶ and that requiring requesting carriers to take an entire agreement will cause delay³¹⁸⁷ and foster discrimination by enabling incumbent LECs to fashion agreements so that no subsequent carrier may benefit from them.³¹⁸⁸ MCI argues that, although this approach may make incumbents less likely to compromise, the effect on negotiations will be small.³¹⁸⁹ The SBA asserts allowing entrants to utilize individual provisions of agreements will lead to increased competition, which, in turn, will drive prices towards the most economically efficient levels, and that these benefits outweigh any additional burden that such unbundling may place upon incumbents in

³¹⁸¹ BellSouth comments at 81.

³¹⁸² GTE comments at 83; *see also* BellSouth comments at 81; USTA comments at 97.

³¹⁸³ Ameritech comments at 99; GTE comments at 83; SBC comments at 24.

³¹⁸⁴ USTA comments at 96.

³¹⁸⁵ *See, e.g.*, ALTS comments at 54-55; LDDS comments at 89; Jones Intercable comments at 36; Sprint reply at 48; CompTel reply at 45; AT&T comments at 89-90; NEXTLINK comments at 36-37; MFS comments at 90-91; Time Warner reply at 45-46; Telecommunications Resellers Ass'n comments at 51; Ohio Commission comments at 84. Teleport argues that, if the FCC does not adopt its "preferred outcomes" paradigm for negotiations, it should allow carriers to pick and choose among provisions, asserting that without the ability to pick and choose among provisions, unequal bargaining conditions between LECs and competitive LECs will make meaningful negotiations impossible. Teleport comments at 54-55.

³¹⁸⁶ WinStar comments at 17-18; MCI comments at 96; Jones Intercable comments at 36; SBA comments at 17; Time Warner reply at 46.

³¹⁸⁷ WinStar comments at 18.

³¹⁸⁸ *See, e.g.*, Telecommunications Resellers Ass'n comments at 51; Sprint reply at 48; AT&T comments at 90 n.139; MFS comments at 90-91.

³¹⁸⁹ MCI comments at 96.

negotiating agreements.³¹⁹⁰ SBA further argues that failure to permit unbundling of agreements would deter entry by smaller competitors that are unable or unwilling to pay for all of the elements contained in a an agreement negotiated by a larger competitor.³¹⁹¹ CompTel asks that we rule that an incumbent LEC may not insist upon the observance of any term or condition that is not reasonable, in the context of the requesting carrier.³¹⁹²

1305. ALTS suggests that we permit unbundled availability to the level of the individual paragraphs and sections of section 251, with the exception of network elements provided pursuant to section 251(c)(3), which ALTS believes should be provided individually to non-parties on a disaggregated basis.³¹⁹³ ALTS argues such a rule would reduce concern that unbundled availability would slow the negotiation process by magnifying the importance of individual terms.³¹⁹⁴ Jones Intercable requests that we clarify that the statute permits so-called "most favored nation" provisions, which allow a new entrant with an interconnection agreement in place with an incumbent LEC to modify such an agreement to substitute the preferable terms included in a later agreement that the incumbent LEC enters with a subsequent new entrant.³¹⁹⁵

1306. Parties' suggestions for the length of time agreements should remain on file pursuant to section 252(i) range from a reasonable period,³¹⁹⁶ until changes in the network adopted for independent reasons make it no longer feasible to provide interconnection under an agreement,³¹⁹⁷ to as long as the agreement remains in operation.³¹⁹⁸ Out of concern that incumbent LECs might force competitors to renegotiate agreements at unreasonably short intervals, the SBA argues that there should be no arbitrary limit on the duration of

³¹⁹⁰ SBA comments at 18.

³¹⁹¹ SBA comments at 16-17; *see also* R. Koch comments at 3.

³¹⁹² CompTel comments at 107.

³¹⁹³ ALTS comments at 54-55.

³¹⁹⁴ *Id.*

³¹⁹⁵ Jones Intercable comments at 36.

³¹⁹⁶ BellSouth comments at 81-82. GTE suggested agreements remain publicly available for a reasonable period, as Commission requires for AT&T's Tariff 12. GTE comments at 83.

³¹⁹⁷ MCI comments at 97.

³¹⁹⁸ Telecommunications Resellers Ass'n comments at 51-52; Time Warner comments at 114; Lincoln Tel. comments at 25-26.

agreements.³¹⁹⁹

1307. Several new entrants also raise issues concerning the filing of agreements pursuant to section 252(i). Jones Intercable urges us to require that incumbent LECs file copies of all negotiated agreements at the FCC, as well as at state commissions.³²⁰⁰

1308. AT&T and the Telecommunications Resellers Ass'n believe section 252(i) requires that interconnection agreements negotiated prior to enactment of the 1996 Act be available for use by requesting telecommunications carriers,³²⁰¹ while F. Williamson opposes this view.³²⁰² MFS, NCTA and WinStar urge us to find that section 252(i) applies to interconnection agreements between adjacent, non-competing LECs.³²⁰³ BellSouth is opposed.³²⁰⁴

3. Discussion

1309. We conclude that it will assist the carriers in determining their respective obligations, facilitate the development of a single, uniform legal interpretation of the Act's requirements and promote a procompetitive, national policy framework to adopt national standards to implement section 252(i). Issues such as whether section 252(i) allows requesting telecommunications carriers to choose among provisions of prior interconnection agreements or requires them to accept an entire agreement are issues of law that should not vary from state to state and are also central to the statutory scheme and to the emergence of competition. National standards will help state commissions and parties to expedite the resolution of disputes under section 252(i).

1310. We conclude that the text of section 252(i) supports requesting carriers' ability to choose among individual provisions contained in publicly filed interconnection agreements. As we note above, section 252(i) provides that a "local exchange carrier shall make available

³¹⁹⁹ SBA comments at 18.

³²⁰⁰ Jones Intercable comments at 20.

³²⁰¹ AT&T comments at 89; Telecommunications Resellers Ass'n comments at 52.

³²⁰² F. Williamson comments at 5 (arguing that nothing in the 1996 Act requires that existing agreements be submitted or resubmitted to a state commission for approval). F. Williamson further comments that the statute does not permit one party to an existing agreement compel renegotiation (and/or arbitration) under the procedures in section 252. *Id.*

³²⁰³ MFS comments at 86; NCTA reply at 13; WinStar reply at 19.

³²⁰⁴ BellSouth comments at 64; *see also* Rural Tel. Coalition comments at 15-16 (asserting sections 251-252 do not apply to agreements between adjacent, non-competing carriers).

any interconnection, service, or network element provided under an agreement . . . to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."³²⁰⁵ Thus, Congress drew a distinction between "any interconnection, service, or network element[s] provided under an agreement," which the statute lists individually, and agreements in their totality. Requiring requesting carriers to elect entire agreements, instead of the provisions relating to specific elements, would render as mere surplusage the words "any interconnection, service, or network element."

1311. We disagree with BellSouth regarding the significance of the legislative history quoted in the NPRM. The Conference Committee amended section 251(g), S. 652's predecessor to section 252(i), and changed "service, facility, or function" to "interconnection, service, or element." The House of Representatives' bill did not contain a version of section 252(i).³²⁰⁶ We find that section 252(i)'s language does not differ substantively from the text of the Senate bill's section 251(g). The Senate Commerce Committee stated its provision, section 251(g), was intended to "make interconnection more efficient by making available to other carriers the individual elements of agreements that have been previously negotiated."³²⁰⁷

1312. We also find that practical concerns support our interpretation. As observed by AT&T and others, failure to make provisions available on an unbundled basis could encourage an incumbent LEC to insert into its agreement onerous terms for a service or element that the original carrier does not need, in order to discourage subsequent carriers from making a request under that agreement. In addition, we observe that different new entrants face differing technical constraints and costs. Since few new entrants would be willing to elect an entire agreement that would not reflect their costs and the specific technical characteristics of their networks or would not be consistent with their business plans, requiring requesting carriers to elect an entire agreement would appear to eviscerate the obligation Congress imposed in section 252(i).

1313. We also choose this interpretation despite concerns voiced by some incumbent LECs that allowing carriers to choose among provisions will harm the public interest by slowing down the process of reaching interconnection agreements by making incumbent LECs less likely to compromise. In reaching this conclusion, we observe that new entrants, who stand to lose the most if negotiations are delayed, generally do not argue that concern over

³²⁰⁵ 47 U.S.C. § 252(i).

³²⁰⁶ Although H.R. 1555's section 244(d) contained similar ideas, its language and structure are sufficiently different from that of section 252(i) that we do not consider section 244(d) to be a prior version of section 252(i).

³²⁰⁷ *Report of the Committee on Commerce, Science, and Transportation on S. 652*, S. Rpt. 104-23, 104th Cong., 1st Sess. (1995) at 21-22.